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Tuck, Rousseau and the Sovereignty of the People

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Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy*. Cambridge: Cambridge University Press, 2016. 295 pp. \$27.99 (paperback). ISBN: 9781107570580.

The Sleeping Sovereign begins with Jean-Jacques Rousseau's claim, from the eighth of his *Letters from the Mountain*, that by not having 'sufficiently distinguished the Sovereign from the Government' all previous writers have failed to understand the democratic constitution (1). Attending to this distinction is crucial, Richard Tuck thinks, if we are to make sense of modern democracy as a constitutional system based on the sovereignty of the people. Rousseau, however, overstated his originality. The first formulation of the distinction is instead found in Jean Bodin, which gave rise to much debate thereafter. On one side of the debate stand, most notably, Hugo Grotius, Samuel Pufendorf and Emmanuel Sieyès, and on the other Thomas Hobbes, Rousseau, the Girondins and some post-revolutionary American jurists.¹

While the government-sovereignty distinction originates with Bodin, Tuck takes his title from Hobbes's intriguing discussion of time-limited monarchies in chapter seven of *De Cive*. Following Bodin, Hobbes distinguished between the right and exercise of sovereign power (94), and a sleeping sovereign could retain the right of sovereignty while playing no role at all in deciding how it should be exercised. The implications of this are far-reaching and Tuck credits Hobbes with having 'ruthlessly followed through the logic of the distinction and concluded that elective monarchies were indeed not sovereign: all the elective monarchies of Europe were (by implication) really either

¹ For a chapter-length overview of the main thesis of the book see Richard Tuck, 'Democratic sovereignty and democratic government: the sleeping sovereign', in *Popular Sovereignty in Historical Perspectives*, edited by Richard Bourke and Quentin Skinner (Cambridge, 2016), 115–41.

aristocracies or democracies.’ (91) Tuck reads Rousseau as siding with Hobbes against Grotius and Pufendorf—more on this to come—but it is the Girondins who were responsible for developing Rousseau’s ideas on popular sovereignty into the modern plebiscitary system. Their model of national plebiscites, Tuck claims, is now permanently established in most European countries (161).

As the book progresses, however, it becomes clear that Tuck’s main interest is America, not Europe, and the high point of his history is the period from 1778 to the Civil War, when nearly all American states adopted a plebiscitary basis for their constitutions (197). Yet the American plebiscitary system never prevailed at the level of the federal constitution. Article V of the Constitution proved a major setback by allowing future constitutional amendments to become valid without passing through either a state or national convention (211–12), and from the 1830s onwards the turn against plebiscites took place at the state level as well. That Tuck laments the demise of the popular sovereignty tradition is evident throughout. For the most part this is conveyed, very effectively, by presenting the ideas of its proponents (and critics) in a clear and sympathetic light, allowing their arguments to speak for themselves. In a concluding chapter, however, he explicitly defends majoritarian democratic sovereignty against some common objections, before suggesting that taking it seriously would involve adopting the ‘living constitutionalism’ approach to the American constitution (282–83). Whatever one thinks of Tuck’s view of modern democracy, it is very refreshing to see a detailed analysis of the normative implications of what is principally a historical study.

What Tuck offers us, then, for the first time, is a history of modern democracy that places the sovereignty-government distinction centre-stage. This directly challenges an alternative view of the legitimacy of modern democracies as based on a certain theory of political representation, perhaps best articulated by Sieyès. Rousseau, Benjamin Constant and Sieyès all viewed representation as the great modern invention (54), but Tuck instead argues that it is democratic sovereignty (divorced from democratic government) that is the distinctively modern phenomenon. Tuck’s narrative is highly original and provocative throughout. Given the breadth, it is also admirably concise, retains the fluency of the 2012 Seeley Lectures on which it is based, while also presenting us with a lucid overview of the main ideas from both the familiar and unfamiliar figures we encounter along the way.

If this was not accomplishment enough, Tuck also challenges received wisdom on a number of key interpretative points as his story unfolds. It is the sort of book that opens up new debates and invites disagreement, and, in this spirit, I proceed to offer some critical observations by focusing on the place Rousseau occupies in Tuck's account.

*

Tuck looks both backwards and forwards from Rousseau, so this provides a helpful point of entry from which to evaluate his wider arguments. Looking backwards first, Tuck's most striking claim is that Rousseau's theory of sovereignty is largely Hobbesian in inspiration.² Tuck is, of course, alert to both the similarities and differences between Hobbes's and Rousseau's theories, and whether or not one reads Rousseau as a Hobbesian will largely turn on which are deemed most important.³ Nonetheless, there are some points of disagreement that I think Tuck understates, which challenge his broader narrative. First, Tuck rightly points out that for Rousseau the will of the sovereign pertains to 'law, and *only* law' (131). The crucial point here is left implicit: Rousseau drew the sovereignty-government distinction in a different place from Hobbes (following Bodin). Hobbes's distinction is between *imperium* and *administratio* (90–91), for which the sovereign need not do anything aside from occasionally deciding who should govern the state. Rousseau saw things very differently and instead mapped the distinction onto the (Lockean) terminology of legislative and executive power (132).⁴ While Tuck distances himself from traditions in the history of political thought that place

² More generally for his Hobbesian reading of Rousseau see Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford and New York, 1999), 197–207.

³ For discussions that take the differences to be more important see Joshua Cohen, *Rousseau: A Free Community of Equals* (Oxford, 2010), 62–68; Robin Douglass, *Rousseau and Hobbes: Nature, Free Will, and the Passions* (Oxford, 2015), especially 121–26.

⁴ Jean-Jacques Rousseau, *On the Social Contract, or Principles of Political Right*, in *The Collected Writings of Rousseau* (hereafter CW), series edited by Christopher Kelly and Roger D. Masters, in 13 vols. (Hanover, NH,

Locke and Rousseau on one side of the debate and Hobbes on the other (120), these traditions seem to better capture how Rousseau understood his own position. As he remarked in the sixth of his *Letters from the Mountain*, quite possibly with the legislative-executive distinction in mind, ‘Locke in particular treated [these matters] exactly in the same principles that I did.’⁵

There is a broader point here about precisely what Rousseau meant by claiming that the will of the sovereign pertains only to law. Tuck cautions against reading too much into this difference between Hobbes and Rousseau, instead arguing that it draws attention ‘to the *fundamental* character of popular sovereignty’ (134). For Tuck, the viability of democratic sovereignty in modern states relies on it being restricted to fundamental, or constitutional, laws. While this is certainly one aspect of what Rousseau understood by law, it does not exhaust the sovereign’s remit. Indeed, it is curious that Tuck neglects the one chapter of the *Social Contract* dedicated to the classification of laws, which indicates that civil and criminal laws also fall within Rousseau’s conception of law.⁶

We need to know precisely what sovereignty involves before we can address the further problem of how frequently the sovereign people should assemble. Tuck claims that, for Rousseau, ‘the democratic and sovereign legislator would meet only intermittently, just as Hobbes’s sleeping democratic sovereign would.’ (135) This comparison is overstated. As Tuck acknowledges, in Hobbes’s case the sovereign could be asleep for sixty or seventy years (91), whereas for Rousseau regular sovereign assemblies would be required to ensure that the government does not abuse its own power or usurp sovereign power, and these should increase in frequency the more power the

1990–2010), vol. 4, iii.1. Cf. John Locke, *Two Treatises of Government*, edited by Peter Laslett (Cambridge, 1988), ii.127–30.

⁵ Rousseau, *Letters Written from the Mountain*, CW9, 236. For helpful discussion see Christopher Brooke, “‘Locke en particulier les a traitées exactement dans les mêmes principes que moi’: revisiting the relationship between Locke and Rousseau’, in *Locke’s Political Liberty: Readings and Misreadings*, edited by Christophe Miquieu and Mason Chamie (Oxford, 2009), 69–82.

⁶ Rousseau, *Social Contract*, ii.12. Elsewhere, Rousseau also indicated that personal taxation and taxation on absolute necessities could only be established with the express consent of the sovereign body, *Discourse on Political Economy*, CW3, 163, 170.

government has.⁷ Later in the book, Tuck claims that democratic sovereignty could be preserved by the people assembling every forty-two years or so (265), but it is difficult to imagine Rousseau countenancing anything even approaching this. At question here is how long the sovereign can sleep without imperilling everything that is important about sovereignty. Hobbes and Rousseau offer very different answers to this question, largely because of their disagreements concerning what sovereignty entails and why it is important. Tuck's answer is closer to Hobbes's than it is to Rousseau's.

While Tuck glosses over some of the far-reaching implications of the differences between Hobbes's and Rousseau's views of sovereignty, he does emphasise what is arguably the most important point of disagreement between the two, albeit with a twist. The 'key difference' is that Rousseau 'did not believe that the sovereign legislature could transfer or alienate its sovereignty to another person or assembly' (139). On this point, however, Tuck argues that Rousseau simply removed an inconsistency in Hobbes's theory, and it should not, therefore, be seen as 'a theory that is in fundamental opposition to Hobbes.' (141) Even if we grant Tuck the inconsistency he identifies in Hobbes's theory, his conclusion does not follow. Hobbes might have been wrong to permit the people to transfer their sovereignty to a monarch, but Rousseau's theory was still set out in stark opposition to the view that Hobbes endorsed (irrespective of whether he should have endorsed it). Indeed, in this respect Hobbes's theory was little different to Grotius's or Pufendorf's. Rousseau thought that all their theories were deeply flawed precisely because they involved sovereignty being alienated from the people to either a monarch or an aristocratic assembly. This illustrates a more general problem with trying to fit Rousseau on one side of the Hobbes vs. Grotius and Pufendorf debate, which is that it precludes the possibility that what made his thought so original and provocative is that he aimed to cut through the debate and articulate a position that challenged both sides.⁸

⁷ Rousseau, *Social Contract*, iii.13.

⁸ Tuck draws on Helena Rosenblatt's important work on the Genevan context to highlight the contextual importance of Grotius's and Pufendorf's ideas, as mediated by Jean Barbeyrac and Jean-Jacques Burlamaqui (121–22). But her account highlights that the Genevan patriciate used these theorists in a way that 'drew them closer to Hobbes' absolutist theory by emphasizing the contract of submission.' See Helena Rosenblatt, *Rousseau and Geneva: From the First Discourse to the Social Contract, 1749–1762* (Cambridge, 1997), 243;

If these observations are broadly accurate then Rousseau might be better seen as marking a rupture in the tradition Tuck is tracing, rather than siding with Bodin and Hobbes against Grotius and Pufendorf. Moreover, if regular legislative assemblies are needed to vote on all matters of constitutional, civil and criminal law, then Rousseau's account of what popular sovereignty requires is more demanding than Tuck suggests, in a way that provides an alternative vantage point looking forwards. Here it is worth emphasising that Tuck reads Rousseau as a thoroughly modern thinker, who thought that the sovereignty-government 'distinction was absolutely essential if democratic politics were to be reintroduced to a world of large commercial states' (4). Tuck's evidence for this rests principally on a passage from the ninth *Letter from the Mountain*, where Rousseau wrote that 'Ancient Peoples are no longer a model for modern ones'. Tuck quotes the passage twice (2–3; 141–42), and it does have a wonderful polemical bite that bears repeating: Genevans, Rousseau chides, 'you are not even Athenians'!⁹ Nonetheless, the passage is somewhat anomalous and if Rousseau really did think that ancient peoples are no longer a model for modern ones then this raises more questions than it answers.

In the *Social Contract* itself—tellingly, in a chapter entitled 'How the Sovereign Authority is Maintained'—Rousseau proposed to consider 'what can be done on the basis of what has been done', before turning to the Roman Republic for inspiration.¹⁰ Indeed, Book IV largely comprises an extended analysis of Roman institutions. Given that the *Social Contract* was written with Geneva in mind, what are we to make of this if ancient peoples are really no longer a model for modern ones? Similar examples from elsewhere in his corpus abound,¹¹ but Tuck does not address the (plentiful)

and, more generally, Robin Douglass, 'Rousseau's Critique of Representative Sovereignty: Principled or Pragmatic?' *American Journal of Political Science*, 57 (2015), 737–39.

⁹ Rousseau, *Letters from the Mountain*, 292.

¹⁰ Rousseau, *Social Contract*, iii.12.

¹¹ Two particularly notable examples will hopefully suffice to illustrate my point. First, in the *Letter to d'Alembert on the Theatre* (CW10, 349), again with Geneva in mind, Rousseau lavished much praise on 'Sparta,

evidence against reading Rousseau as someone who was trying to reintroduce democratic principles into a world of large commercial states, and it remains unclear how such passages could be reconciled with his interpretation.

There is more at stake here than just a question of Rousseau interpretation. From Tuck's perspective, Rousseau captures a distinctively modern way of thinking about sovereignty. But from another perspective, we could see Rousseau as articulating a vision of sovereignty too demanding for large commercial states, and the unfolding of Tuck's subsequent history as illustrating the (insurmountable) problems of trying to make good on the sovereignty of the people in modern times. From this perspective, in so far as modern democracies are based on popular sovereignty, the developments in France and America represent, at best, a watered down version of Rousseau's principles. To see why recall that, for Rousseau, regular sovereign assemblies must be established by constitutional law. Crucially, it is not enough for the people to have originally ratified the constitution if provisions are not in place for the sovereign to reassemble on a regular basis thereafter.¹² If the people only assemble when called to do so by the government—as is the case in most modern referendums—then the people are not really sovereign at all. This is even true on Hobbes's account of the sleeping sovereign.¹³

which I shall have never cited enough as the example we ought to follow'. Second, the second chapter of the *Considerations of the Government of Poland* is entitled the 'Spirit of Ancient Institutions', the lessons from which Rousseau then seeks to apply to Poland, 'the one of all the peoples of today which distances me the least from those about whom I have just been speaking' (CW11, 174).

¹² Rousseau, *Social Contract*, iii.13.

¹³ See the fourth case of electing a time-limited monarch in *De Cive*, translated as *On the Citizen*, edited by Richard Tuck and Michael Silverthorne (Cambridge, 1998), vii.16. Tuck claims that 'the modern democratic sovereign is in effect in the third of Hobbes's four cases' (281). However, in Hobbes's third case the people 'would hold meetings at fixed times and places' while the government is still in power. Tuck acknowledges that 'the people under the American Constitution do not have a specific predetermined date for meeting but are free (in some sense) to meet whenever they choose'. I am not sure in precisely what sense Tuck thinks the people are free to meet whenever they choose. From Rousseau's perspective, at least, for the people to act or take any

The sovereignty of the people, as Tuck sees it, is the promise at the heart of modern democracy, which is ours to revive if and when we choose to awake. But another way of seeing it—arguably a more Rousseauian way—is that the reason why we are so thoroughly asleep is because this promise has little place in the large commercial states that most of us inhabit today. Indeed, this would not have surprised Rousseau, who thought that the prospects for legitimate states were vanishingly slight in eighteenth-century Europe and, in the *Social Contract*, concluded that it is no longer ‘possible for the Sovereign to preserve the exercise of its rights among us unless the City is very small.’¹⁴ Read this way, then, if Rousseau shows us what it would really mean for the people to be sovereign, Tuck’s history shows us why this ideal is now lost to us.

decisions they must first be assembled and are, therefore, unable to choose to assemble in the sense Tuck suggests.

¹⁴ Rousseau, *Social Contract*, iii.15.